Supreme Court, U.S.
FILED

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No. _____

CLERK

In The

Supreme Court of the United States

October Term, 1996

LAWRENCE NORMAN MAIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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29 pp

QUESTION PRESENTED

1. If Congress was absent of the power to regulate and restrain the purchase of opiates and other drugs, as this Court held, in 1928, what change in circumstance has allowed Congress to overcome that insuperable condition and gain the requisite power to now do so?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal court**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 7, 1996.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 23, 1996, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I., Section 8., and Congress' power under it.

STATEMENT OF THE CASE

September of 1992, Petitioner was arrested as a result of a reverse sting operation. Was indicted, eventhough, his alleged co-conspirator swore under oath: that Mr. Main was not involved. He was convicted, by jury, of conspiracy to attempt to possess Methamphetamine with intent to distribute and aiding and abetting the same, when the exculpatory testimony of the alleged co-conspirator was not allowed to be considered, by the jury. Conviction was affirmed, see U.S. v. Main, 16 F.3d 925 (1994).

This Court decided the case of U.S. v. Lopez, 115 S. Ct. 1624 (1995), he filed the action brought for review.

This action challenges the conviction, as illegal, because Congress enacted The Controlled Substances Act, under the pretext of executing its powers under the guise of regulating interstate commerce.

The district court disagreed, the Honorable Richard H. Kyle, U.S. district court judge, declining to do his painful duty: declare the act of Congress void.

The Eighth Circuit Court of Appeals was not up to the task; where the duty, as defined by this Court, would seem to be clear, but, it refused to hear the matter.

The Petitioner now prays, this Court, is up to the painful task.

REASONS FOR GRANTING THE PETITION AS TO QUESTION 1.

The United States Court of Appeals, for the Eighth Circuit, entered a decision, which sanctioned the District Court's decision, departing from this Court's holdings, on an important question of Constitutional law, that has been, but should be, settled by this Court's supervisory power; in the interest of the entire nation.

I. INTRODUCTION TO QUESTION PRESENTED

In 1959, this Court in *Napue v. Illinois*, 360 US 264, 3 L. ed2d 1217, held that:

> "It is the duty of the United States Supreme Court to make its own independent examination of the record when federal constitutional deprivations are alleged, the duty resting on the Court's responsibility for maintaining the Constitution inviolate." Id. at 1218.

In 1964, this Court in *Escobedo v. Illinois*, 378 US 487, 12 L. ed2d at 985-86 expressed the opinion that:

> "If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system."

As Petitioner will outline, below, one thing that is very wrong with this system: is how the government and

the courts below, have become too dependent on the fact that this Court only takes 1 in a 100 of these type cases.

1. at A The Federal Government, because of Congress' enactment of harsh drug laws, in the pretext of executing its powers under the Commerce Clause, is running wild in the States seizing property and imprisoning State Citizens in violation of the Constitution.

Petitioner allegedly violated these seeming laws. The Federal Government, with its "blank check" erected by way of Congress' pretext of executing its powers under the Commerce Clause, is manufacturing drugs and alleged drug crimes, inside the states in an onerous attempt at enforcement of these seeming laws.

Petitioner's case is a clear cut example of how the Federal Government has, by way of Congress' pretext at executing its powers under the Commerce Clause, entered an area of traditional state concern: the defining and enforcement of the criminal law.

The Petitioner will show, below, that the Congress has always been denied such power by Constitutional limits, imposed for just such a purpose, and enforced by this Court.

A. As to Question 1.

THE CONTROLLED SUBSTANCES ACT AND OTHER SIMILAR MEASURES ARE "SEEMING LAWS" UNDER THIS COURT'S HOLDINGS.

1. This Court, in 1928, in *Nigro v. U.S.*, 276 US 332, held:

> "Congress has no power to regulate and restrain the purchase of opiates and other drugs." Id. at 332.

Yet, Congress has erected a police power, to do just such things, in the pretext of executing its powers under the Commerce Clause. These enactments, by Congress, are "seeming laws", enacted to allow it to invade areas not entrusted to it, but left to the States, by the Constitution.

2. This Court, in 1922, in *Bailey v. Drexel*, 66 L.ed 817, held that if Congress enacted "seeming Laws", which it defined as laws enacted by congress for accomplishment of objects not entrusted to the government, that it would not recognize or enforce such "seeming laws". Id. at 820.

One can only hope, that this Court will see: that Congress, by way of the Controlled Substances Act and other similar measures, has done the very thing this Court in *U.S. v. Lopez*, 131 L.ed2d 626 (1995), held it would not help it do:

> "(4) . . . (a) "pile inference upon inference in a manner that would bid fair to convert congressional authority under the commerce clause to a general police power of the sort retained by the states." Id. at 627.

3. The Controlled Substances Act and similar measures intrude upon an area of traditional state concern. The enforcement of the criminal laws is a traditional concern of the States, and if a state or municipality determines that harsh criminal sanctions are necessary and wise to deter state drug offenses, the reserved powers of the states are sufficient to enact those measures and punish

those offenses. The Act upsets the federal balance to a degree that renders it an unconstitutional assertion of the commerce power, as defined, by this Court, in Bailey, supra, quoting the Court's analogy of congressional power over interstate commerce in the case of *Hammer v. Dagenhart*, 247 US 251. Id. at 820.

4. Congress' findings, 21 USC Sec. 801, say its to be enacted to protect the health and general welfare of the American people. This is the insidious feature spoke of, by this Court, in Bailey, supra, that allows good people to support unconstitutional legislation. Id. at 819.

5. If the transaction or conduct is not within the grant of power to Congress, it lies within the controlling power of the State in the exercise of the police power. Tenth amendment; *Martin v. Hunter*, 1 Wheat. 304, 326; *House v. Mayes*, 219 US 270, 281-82; *New York v. Miln*, 11 Pet. 102.

6. The Controlled Substances Act is not a regulation of commerce in the constitutional sense, but regulation of some one of the many internal affairs of the States which Congress is not empowered to deal with. Congress has no general police power; it may exercise a police power only over a subject-matter already under its jurisdiction, by virtue of some authority delegated to it by the constitution. In other words, a police purpose may be the reason for exercising a power possessed, but it is not a source of power. *Jacobson v. Massachusetts*, 187 US 11, *Sherlock v. Alling*, 93 US 99; 12 Corpus Juris, 910.

7. To uphold the Act upon the theory of police power it must be clear that interstate commerce is menaced and

not something else outside that domain. Whatever menace there is in conspiracy to attempt to possess Methamphetamine it has a locality. When as here, where the Federal Government manufactured, the alleged drug, and the Petitioner never even saw the alleged drug, thus, there was no transportation to constitute the requisite menace to interstate commerce. Here, Congress is operating outside the domain of interstate commerce.

8. The statement that the power of Congress over commerce is full and complete does not aid the matter because that statement by Chief Justice Marshall in *Gibbons v. Ogden,* 9 Wheat. 1, is preceded by and predicated upon the proposition that the subject of regulation is within the power asserted.

9. That the possession of full and complete power does not warrant the exercise of that power to bring about a result or condition outside that power, is strikingly exemplified in cases decided by this Court, of which *Western Union Telegraph Co. v. Kansas,* 216 US 1, may be mentioned, where the power of a State to fix the terms and conditions upon which foreign corporations may do business in the State was considered. So a general power of prohibition must exist to sustain the Act. There is no such power. It is not a case of the possession of power restrained by certain limitations, but a case of the entire absence of power.

10. Congress is doing indirectly what it cannot do directly: erect a nation wide prohibition of the possession of certain listed drugs, similar to the nation-wide prohibition of the drug Alcohol, by way of the 18th Amendment to the U.S Constitution, in January of 1919.

The 18th Amendment ushered in a new Congressional Power in that it specifically empowered Congress to legislate a complete ban on intoxicating liquors.

11. It is the high duty and function of this Court to decline to recognize or enforce seeming laws of Congress, as here, dealing with subjects not entrusted to Congress, but left or committed by the Constitution to the control of the States. This Court cannot avoid the painful duty and function, as set out in Bailey, supra: to decline to recognize or enforce, seeming laws, such as, The Controlled Substances Act and other similar measures, enacted by Congress under the pretext of executing its powers.

12. This Court held in Lopez, supra, that there are only two types of valid federal regulation under the "substantial effects" test: First, "a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce." S.Ct. 1630. This Court has made no such determination as to the Controlled Substances Act. Second, criminal statutes that include a "jurisdictional element which would ensure, through case-by-case inquiry, that the prohibited act in question affects interstate commerce." Id. at 115 S.Ct. at 1631. 21 USC Sec. 841 and 846, statutes of which Petitioner was convicted, are just such criminal statutes, in that they do not contain a jurisdictional element, which would require the Federal Government's Prosecutor to establish that the statute, as applied, is consistent with the Federal Government's authority under the Commerce Clause. Here, the absence of this jurisdictional language has allowed federal authorities to usurp the power of the State of Minnesota to

define and enforce the criminal law. The Federal Government, because of the absence of the jurisdictional element, were not forced to establish a nexus to interstate commerce beyond a reasonable doubt.

13. When, as here, where Congress criminalizes conduct already denounced as criminal by the States, it effects a change in the sensitive relation between federal and state criminal jurisdiction, according to this Court in *U.S. v. Enmons*, 410 US 396, 411-12 (1973). A jurisdictional element is therefore not mere surplusage, for it "ensures, through a case by case inquiry, that the prohibited act in question effects interstate commerce." Id. at 115 S.Ct. at 1631.

14. The 3rd. Circuit, in *U.S. v. Bishop*, 66 F.3d 569 (1995), upheld the federal car-jacking statute because, unlike the firearm possession statute, this Court struck down in Lopez, supra, 18 USC Sec. 2119 contained a jurisdictional element that required the government to prove that the vehicle stolen was "transported, shipped, or received" in interstate commerce.

15. The 9th Circuit, in *U.S. v. Pappadopoulos*, 64 F. 3d. 522 (1995), following this Court's holding in Lopez, held that jurisdictional element of federal arson statute had not been satisfied by proof that a private residence received natural gas from out-of-state.

16. The 7th Circuit, in *U.S. v. Bell*, 70 F. 3d 495, 4 (1995), held statute outlawing felon's possession of a firearm, 18 USC Sec. 922(g)(1), survives challenge under Lopez because "it contains an explicit requirement that a nexus to interstate commerce be established."

17. Petitioner's Case, is a clear example, that the Federal Government has been handed a "blank check" by Congress in its pretext of executing its power under the Commerce Clause. The Framers and Ratifiers of the Constitution never intended to confer a general police power on the legislative branch. The general police power, present in this case, does not square with this Court's view of congressional power, clearly stated in Lopez:

> "the Constitution withholds from Congress a plenary police power that would authorize enactment of every type of legislation." Id. 1633

Here, the alleged drugs were manufactured, owned and transported by the government, all within Minnesota, thus, this is clear proof, Petitioner did not receive, ship or transport drugs in interstate commerce, as required.

18. Here, Petitioner is convicted of conspiracy to attempt to possess, this is proof that Congress is exercising a plenary police power, in that there was no requisite receiving, transporting nor shipping in interstate commerce to manifest the menace needed to awaken the federal jurisdiction.

19. A statute without jurisdictional language, as here, permits a careless or overzealous federal prosecutor to bring the full weight of the national government to bear on a situation that may, as here, in fact, lack any true connection with interstate commerce.

The grant of authority over a purely federal matter was not intended to destroy the local power always existing and carefully reserved to the States in the Tenth

Amendment to the Constitution. Police regulations relating to the internal trade and affairs of the States have been uniformly recognized as within such control. "This," said this Court in *U.S. v. Dewitt*, 9 Wall. 41, 45, "has been so frequently declared by this Court, results so obviously from the terms of the Constitution, and has been so fully explained and supported on former occasions, that we think it unnecessary to enter again upon the discussion." Id. at 247 US at 274, *Hammer v. Dagenhart*, supra.

20. As is shown above, this Court mistakenly thought the principle that the Federal Government, by way of Congress's seeming laws, could not coerce people of a state into compliance with Congress' wishes, in respect of a matter completely the business of the state government under the Federal Constitution, because it had fully explained and supported it on former occasions. However, Congress and the Federal Government, as Bailey and Dagenhart, supra, show, don't go by what the Court holds to be the law, unless forced to time and again. Hence, freedom must be fought for, against all foes, daily, forever.

If the Constitutional limitations put on Congress, by the Framers and Ratifiers of the Constitution, are to have any meaning and the sovereignty of the States are not to be completely wiped out this Court must do its painful duty. Only this Court can put a stop to the human sacrifice now under way in the Federal Government's war on drugs.

If there was ever a time in the history of this nation that the wisdom and power of the Supreme Court is needed to set a new course for a problematic situation: it

is the drug war, it is now. What can the future of the Union be, if the very thing which we Americans think makes this country and government special and above all others: our Constitution can so easily and clearly be usurped.

If this Court is to maintain the Constitution inviolate, safeguard the integrity of our adversary system, it cannot justify or condone the illegality present here, as was done below; to do so will result in a miscarriage of justice and seriously affect the fairness, integrity and public reputation of judicial proceedings.

CONCLUSION

Petitioner is in prison, for 20 years, for violation of seeming laws.

The petition for writ of certiorari, if granted, and Petitioner prays that it will be, will involve some very painful duty for this Court, but it must be done, sooner or later, for anything less, proves it takes crime to fight crime; just results are in the eyes of the government prosecutor, and Rights on paper can be lost in the reality of the Federal Government's war on drugs.

Words of the late Justice Thurgood Marshall would be very apropos here:

> "History teaches that grave threats to liberty often come in times of urgency, when

constitutional rights seem too extravagant to endure."

Respectfully Submitted,

LAWRENCE NORMAN MAIN, pro se

Dated: this 17 day of December 1996.

APPENDIX-A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

A second copy
of 8th Cir. s opinion

No. 96-2237MNST

Lawrence Norman Main, Appellant,	* Appeal from the United * States District Court for the
v.	* District of Minnesota
United States of America, Appellee.	*

JUDGMENT

(Filed Oct. 7, 1996)

The court, having reviewed the record in this case, denies appellant's request for a certificate of appealability. The appeal is dismissed.

August 2, 1996

A true copy.

ATTEST: /s/ Michael E. Gans

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX-B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Lawrence Norman Main,

Plaintiff,

vs.

United States of America,

Defendant.

Crim. No. 3-92-96(2)
Civil No. 3-96-239
MEMORANDUM OPINION AND ORDER

(Filed Apr. 26, 1996)

Lawrence Norman Main, *pro se*, for Plaintiff.

D. Gerald Wilhelm, Assistant United States Attorney, Minneapolis, Minnesota, for Defendant.

Introduction

This matter is before the Court on Plaintiff Lawrence Norman Main's ("Main") Motion to Vacate Conviction and Sentence pursuant to 28 U.S.C. § 2255. Main was convicted of conspiracy to distribute methamphetamine and for aiding and abetting with intent to possess or distribute methamphetaime in violation of section 841 and 846 of the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* Main's conviction and sentence were affirmed on direct appeal. *United States v. Main*, 16 F.3d 927 (8th Cir. 1994). Main subsequently filed a § 2255 Motion to Vacate Conviction and Sentence, which this Court denied by Order dated November 7, 1994. (Doc. No. 126.) The matter before the Court is Main's second § 2255 Motion. For

the reasons set forth below, this Motion will be summarily dismissed.[1]

Discussion

Main claims his conviction and sentence must be set aside because the Controlled Substances Act is unconstitutional. He argues that, based on the Supreme Court's recent decision in *United States v. Lopez*, 115 S. Ct. 1624 (1995), Congress's attempt to regulate local drug trafficking exceeds its authority under the Commerce Clause. He accordingly claims the Controlled Substances Act violates the Tenth Amendment, which reserves to the states powers not delegated to Congress. He further argues that, because the Eighteenth Amendment was required to prohibit the sale of alcohol, a similar amendment is required for Congress to regulate controlled substances such as methamphetamine.

Main's arguments are without merit. *Lopez* held that 18 U.S.C. § 922(q), the Gun-Free School Zones Act of 1990, violated the Commerce Clause.[2] The Court reasoned that possession of a gun in a local school zone was not an economic activity, that prohibition of such possession was

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[1] An evidentiary hearing is unnecessary, inasmuch as Main's Motion can be resolved on the basis of the record. *See Dall v. United States*, 957 F.2d 571, 573 (8th Cir. 1992) (holding that an evidentiary hearing is unnecessary where files and records conclusively show that petitioner is not entitled to relief).

[2] The Gun-Free School Zones Act of 1990 forbade "any individual knowingly to possess a firearm at a place he knows is a school zone." 18 U.S.C. § 922(q)(1)(A).

not part of a larger regulatory scheme which would be undercut unless the local activity were regulated, and that such possession did not arise out of and was not connected with a commercial transaction, "which viewed in the aggregate, substantially affects interstate commerce." *Lopez*, 115 S. Ct. at 1630-31.

Lopez does not cast doubt on the validity of the Controlled Substances Act. The Controlled Substances Act clearly regulates interstate economic activity. Eliminating the local elements of this Act would undercut Congress's larger regulatory scheme of prohibiting interstate drug trafficking. Additionally, Congress made specific findings prior to enacting the Controlled Substances Act which detail the interstate effects of intrastate drug trafficking and possession. *See* 21 U.S.C. § 801.[3] These effects are substantial.

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[3] In particular, Congress found as follows:

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because –

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

Moreover, circuit courts, both before and after *Lopez*, have universally held that the Controlled Substances Act is not in excess of congressional authority to regulate interstate commerce. The Eighth Circuit has expressly determined that "[u]nder its authority to regulate commerce pursuant to Article 1, Section 8, cl.3, of the United States Constitution, Congress may regulate both interstate and intrastate traffic and possession of controlled substances." *United States v. Curtis*, 965 F.2d 610, 616 (8th Cir. 1992); it specifically reaffirmed this holding after *Lopez*, stating "[w]e note that intrastate drug activity affects interstate commerce . . . that Congress may regulate both interstate and intrastate drug trafficking under the Commerce Clause (citing *Curtis*) and that [21 U.S.C.] section 841(a) is a valid exercise of Congress's Commerce Clause power." *United States v. Brown*, 72 F.3d 96, 97 (8th Cir. 1995) (per curiam), *petition for cert. filed* (U.S. Mar. 27,

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(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

21 U.S.C. § 801.

1996) (No. 95-8470). The Eighth Circuit's conclusion is in accord with the other circuit courts which have considered this issue. *See United States v. Genao*, Nos. 95-1084 & 95-1266, 1996 WL 148633 (2nd Cir. Apr. 1, 1996) (rejecting *Lopez* Commerce Clause challenge to Controlled Substances Act) (citing cases); *United States v. Kirk*, 70 F.3d 791, 802 n.7 (5th Cir. 1995) (recognizing that Controlled Substances Act is a valid exercise of congressional authority under *Lopez*) (Jones, J., dissenting); *United States v. Leshuk*, 65 F.3d 1105, 1111-12 (4th Cir. 1995) (rejecting *Lopez* Commerce Clause challenge to Controlled Substances Act); *United States v. Bernard*, 47 F.3d 1101, 1103 (11th Cir. 1995) (recognizing that Controlled Substances Act does not violate the Commerce Clause) (per curiam); *United States v. Visman*, 919 F.2d 1390, 1392-93 (9th Cir. 1990) (same), *cert. denied*, 502 U.S. 969, 112 S. Ct. 442 (1991); *United States v. King*, 485 F.2d 353 (10th Cir. 1973) (same); *United States v. Scales*, 464 F.2d 371 (6th Cir. 1972) (same); *United States v. Lopez*, 459 F.2d 949 (5th Cir.) (same), *cert. denied*, 409 U.S. 878, 93 S. Ct. 130 (1972).

The foregoing authority is both binding and persuasive. The Court finds the Controlled Substances Act is permissible under the Commerce Clause. Main's § 2255 Motion will accordingly be dismissed.

Conclusion

Based on the foregoing, and upon all the files, records, and proceedings herein, **IT IS ORDERED** that:

(1) Plaintiff's "Motion to be Parte to Court Order" (Doc. No. 132) is **DENIED**[4]; and

(2) Plaintiff's Motion to Vacate Conviction and Sentence is **DISMISSED WITH PREJUDICE.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

April 20, 1996

/s/ Richard H. Kyle
RICHARD H. KYLE
United States District Judge

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[4] After filing his § 2255 Motion, Main filed a motion seeking a copy, if any, of a court order directing the Defendant to respond to his § 2255 Motion. The Court did not issue such an Order.

APPENDIX-C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-2237MNST

Lawrence Norman Main,	*	
Appellant,	*	Order Denying Petition for Rehearing and Suggestion for Rehearing En Banc
v.	*	
United States of America,	*	
Appellee.	*	
	*	

The suggestion for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 23, 1996

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit